

III. Recommendations for Intervening on a Voluntary Basis with a Lawyer Exhibiting Cognitive Impairment/Decline

A. Approaching the Impaired / Declining Lawyer

1. Partner with individual(s) with first hand observations of the lawyer's behaviors that are raising concerns about the lawyer's continued competence to practice law and who are trusted by the lawyer.
2. Consider utilizing the Cognitive Impairment Worksheet to gather and organize concerns regarding the impaired/declining lawyer.
3. Have a non-confrontational meeting with lawyer and the concerned individual/s; actively avoid confrontation. (It is recommended to have a preparatory meeting with the concerned individuals.)
4. Starters / icebreakers
 - *I am concerned about you because...*
 - *We have worked together a long time. So I hope you won't think I'm interfering when I tell you I am worried about you...*
 - *I've noticed you haven't been yourself lately, and am concerned about how you are doing....*
5. Get the lawyer to talk; listen, do not lecture.
6. While listening, add responsive and reflective comments.
7. Express concern with gentleness and respect.
8. Share firsthand observations of the lawyer's objective behavior that is raising questions or causing concerns.
9. Review the lawyer's good qualities, achievements and positive memories.
10. Approach as a respectful and concerned colleague, not an authority figure.
11. Act with kindness, dignity and privacy, not in crisis mode.
12. If the lawyer is not persuaded that his/her level of professional functioning has declined or is impaired, suggest assessment by a specific professional (in most instances, a neuropsychologist) and have contact information ready.
13. When appropriate, offer assistance and make recommendations for a plan providing oversight (such as a buddy system or part-time practice with co-counsel).
14. When appropriate, propose a voluntary transfer of attorney status to an available non-practicing option, e.g., taking "inactive," "retired," or "emeritus" status.
15. Remember that this is a process, not a onetime event.

B. Do's and Don'ts

1. Do
 - Be direct, specific, and identify the problem
 - Speak from personal observations and experience; state your feelings
 - Report what you actually see
 - Be respectful and treat the lawyer with dignity
 - Be cautious when including family members
 - Act in a non-judgmental, non-labeling, non-accusatory manner
 - Offer to call the lawyer's doctor with observations
 - Refer for evaluation, have resources at hand

- Suggest alternative status such as inactive status or disability leave
- Suggest the potential consequences for inaction: malpractice or disciplinary complaints

2. Don'ts

- Ignore and do nothing
- Attempt to diagnose
- Insist or threaten if lawyer directs you to back off; attempt to discuss again at a later date

Adapted from the Texas Lawyer Assistance Program's *The Senior Lawyer in Decline: Transitions with Dignity – ABC's of Helping the Senior Lawyer in Need*